IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Criminal Revision No. 614 of 1992

Date of Decision :- March 22, 2007

Pawan Kumar ....PETITIONER

VERSUS

State of Haryana ....RESPONDENT

CORAM: HON'BLE MR. JUSTICE MEHTAB S.GILL

Present:- Mr. Raj Kumar Gupta, Advocate
for the petitioner.

Mr. Kulvir Narwal, Addl. Advocate General, Haryana.

MEHTAB S.GILL, J.

This is a revision against the judgment dated 3.9.1992 of the Additional Sessions Judge, Jagadhri, affirming the judgment/order dated 11.1.1991/14.1.1991 of the Sub Divisional Judicial Magistrate, Jagadhri, whereby he convicted Pawan Kumar son of Lal Chand under Section 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act and sentenced him to undergo R.I. for six months and to pay a fine of Rs.1,000/-, in default to further undergo R.I. for three months.

The case of the prosecution, is that on 7.5.1986 at 11.20 a.m., Food Inspector along with Dr. A.Narain visited the shop of petitioner Pawan Kumar in the area of Gopi Market, Jagadhri. He was found in possession of 5 Kg red chilli powder (Lal mirchi). Notice Ex.PA was given and 450 grams of the chilly powder was purchased. The purchased chilly powder was divided into three parts and was put into three dry and clean bottles. The bottles were labelled and securely fastened and were wrapped into thick khaki paper. Seal was put on the bottles. One sample was sent to the Public Analyst, Haryana and the remaining two samples with form VII were sent to Local Health Authority, Jagadhri. As per the report of the Analyst, the chilly powder was found adulterated.

The prosecution to prove its case brought into the witness box Dr. Akkhlesh Narain as PW1, J.S.Chauhan Food Inspector as PW2 and C.K.Shukla as PW3.

Learned counsel for the petitioner has argued, that Food Inspector J.S.Chauhan PW2 was not authorised to take the samples. Petitioner was not running the shop and it was his father, who was doing the business of Karyana merchant. Petitioner was only sitting there, as his father had to do some work. The independent witness Beni Parshad, who was allegedly present at that time, was not examined by the prosecution. The testimony of the official witnesses cannot be relied upon. They are only interested in the conviction of the petitioner. The independent witness Beni Parshad appeared as DW2 and stated, that he was present at the time of taking sample by the Food Inspector and the petitioner/accused had clearly told the Food Inspector, that he was sitting because his father had gone to do some work. Chilly powder was not mixed before taking

the sample. J.S.Chauhan Food Inspector PW2 did not comply with the provisions of the Prevention of Food Adulteration Act.

Learned counsel for the State has argued, that as per gazette notification No.36/30/85-4HB-II, dated 29.3.1985, J.S.Chauhan PW2 was authorised to function as Food Inspector for taking sample of food articles. Both J.S.Chauhan Food Inspector PW2 and Dr. A.Narian PW1 disclosed their identity before buying the chilly powder from the petitioner. If the petitioner was just sitting on the counter in place of his father, then he should have stated this, at that moment of time. In fact he was indulging in the business of sale of Karyana articles. Beni Parshad, the independent witness, was not examined by the prosecution, as he had been won over by the accused. The testimony of Dr. A.Narain, J.S.Chauhan Food Inspector PW2 and C.K.Shukla PW3 is truthful and cogent. They have corroborated each other inter-se.

I have heard the learned counsel for the parties, perused the impugned judgments and the record with their assistance.

Gazette notification No.36/30/85-4HB-II, dated 29.3.1985 authorised J.S.Chauhan Food Inspector PW2, to take samples and also to further launch proceedings in a Court, if the samples are found to be adulterated. Sample was taken from the shop of the petitioner/accused, after both J.S.Chauhan Food Inspector PW2 and Dr. A.Narain PW1 had disclosed their identity. Petitioner was found in possession of 5 Kg of red chilly powder, out of which 450 grams was purchased. It was divided into three parcels and accordingly sealed as per the Act and Rules. Report Ex.PD of the analyst shows, that the chilly powder was adulterated. Beni Parshad DW1 was not produced by the prosecution, as he had been won

over by the petitioner/accused. There was no other independent witness apart from him.

I do not find any infirmity in the judgment of the learned Additional Sessions Judge.

This Court in **Mahavir Vs. State through Govt. Food Inspector, 2000(4) RCR (Crl.) 208** has held that as the petitioner had suffered protracted trial, sentence of the petitioner is reduced to that already undergone.

In the present case, the sample was taken on 7.5.1986 and revision in this Court was filed in the year 1992. The sword of conviction is hanging over the head of the petitioner, for the last 21 years. This itself is a punishment. Relying upon the judgment in **Mahavir' case** (supra), Sentence of the petitioner is modified to that already undergone.

With the above modification in sentence, revision petition is dismissed.

March 22, 2007 **(MEHTAB S.GILL)**
S.K.Arora **JUDGE**

WHETHER TO BE REFERRED TO REPORTER? YES/NO